



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RR, MNSD, FF

Introduction

This hearing was convened by way of conference call concerning the amended application of the tenants seeking a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; an order reducing rent for repairs, services or facilities agreed upon but not provided; a monetary order for return of all or part of the pet damage deposit and security deposit; and to recover the filing fee from the landlord for the cost of the application.

One of the named tenants attended the hearing and represented the other named tenant. An agent for the landlord also attended. The parties each gave affirmed testimony and were given the opportunity to question each other respecting the evidence and testimony provided, all of which has been reviewed and is considered in this Decision. No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

- Have the tenants established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for excess water bills and loss of services?
- Have the tenants established that rent should be reduced for repairs, services or facilities agreed upon but not provided?
- Have the tenants established a monetary claim as against the landlord for return of all or part of the pet damage deposit or security deposit?

Background and Evidence

The tenant testified that the tenancy originally began on March 14, 2014 for the upper level of the rental house for rent in the amount of \$1,800.00 per month. The term of the tenancy was fixed for one year, however on November 1, 2014 an Addendum was created to increase the rent to \$2,450.00 per month for rental of the upper level as well as the basement suite, commencing November 1, 2014, and the fixed term did not change. At the commencement of the tenancy the landlord collected a security deposit from the tenants in the amount of \$900.00 as well as a pet damage deposit in the amount of \$900.00, both of which are still held in trust by the landlord. The tenancy ended on December 31, 2015, and copies of the tenancy agreement and the Addendum have been provided. No move-in or move-out condition inspection reports were completed.

The tenant further testified that the tenants sent to the landlord a forwarding address for return of the security deposit on November 23, 2015 but the mail was refused by the landlord. The tenants also sent by email the forwarding address to the landlord's agent.

The rental unit had originally been advertised with a fireplace, which serves as a secondary heating system. The fireplace was functioning at the beginning of the tenancy but was not working commencing October 1, 2015 and the tenants advised the landlord. The alternate heating system was not enough to warm the living room, and the tenants could not enjoy the living room without having blankets over them. A service person inspected it and said it couldn't be repaired and had to be replaced, but the landlord said he would only replace it if the tenants agreed to a 10% rent increase. The tenants refused and told the landlord that if the landlord didn't replace it, the tenants would reduce rent by 10%. The landlord didn't have it replaced until December 8, 2015, and the tenants seek compensation of 10% of rent from October 1 to December 8, 2015 in the amount of \$556.45.

In 2014 there was a leak in the irrigation pipes underground which was not visible. Water was not included in the rent and the tenants' water bills increased substantially, copies of which have been provided. The irrigation system needs to be winterized, and the landlord had a service person shut it off in October, 2014 and it had to be started up again in the spring. The bill from January 1 to March 31, 2015 shows the normal consumption because that is during the time that water was turned off to that system. From April, 2014 to June, 2015 the tenants overpaid an estimated \$834.57. The tenants talked to the landlord about the repair and the landlord said he'd pay for half of the cost but not the entire repair and wanted the tenants to take care of it. The tenants refused, and it never was repaired. The landlord had an irrigation company look at it,

and the tenant spoke to the service person. The service person said it was necessary to dig it up and check all underground pipes and the landlord refused it, so nothing was done. The tenants agree that they owe a water bill for July to December, 2015 in the amount of \$578.45, and the difference between that and the tenants' claim is \$256.12. The tenants seek that amount as compensation from the landlord.

The tenant agrees that the rent for December, 2015 was not paid to the landlord. The tenants seek \$1,800.00 for the security deposit and pet damage deposit; \$50.00 for the filing fee, \$556.45 for the rent reduction for loss of the fireplace, and \$256.12 for excess payment of water bills, for a total of \$2,662.57. The tenants reduce the claim to set off the rent owed for December of \$2,450.00, and the tenants seek the difference of \$212.57.

The landlord's agent testified that the landlord hired the agent in November, 2015 and was made aware of the fireplace problem. The landlord asked the agent to check quotes for a new one, which were fairly high. The landlord's agent confirmed that there was no way of repairing it, and told the landlord it had to be replaced, which was done by December 7, 2015. The landlord didn't feel it was out of line because there was a working furnace at all times and the landlord was actively looking for a solution. The landlord's agent is not sure of its efficiency.

With respect to the irrigation system, the landlord's agent submits that it's difficult to say how much water spilled into the ground as a result of the leaks, and the landlord feels the rates claimed by the tenants are high.

The landlord's agent received the tenants' forwarding address in writing on December 16, 2015 by registered mail on the tenants' amended application.

Tenant's Closing Submissions

The tenants rented the home for \$2,450.00 per month and couldn't enjoy the property and feel that a 10% rent reduction is a low estimate. The tenants paid for water and overpaid due to the landlord's constant failure to do repairs. Instead of dealing with it, the landlord says the tenants are harassing him, wanted the tenants to pay for it, and recently hired an agent to deal with it. That's why the tenants moved out.

Landlord's Closing Submissions

The landlord was not unwilling to fix the fireplace, but it turned out that it couldn't be fixed, then the landlord hired the landlord's agent, and it got replaced.

With respect to the water issue, the landlord's agent submits that it's hard to say from a usage stand-point what the loss is, and water costs in general have increased over the years.

Analysis

The *Residential Tenancy Act* requires a landlord to provide and maintain rental property in a state of decoration and repair that makes it suitable for occupation by a tenant. In this case, the tenant testified that the fireplace was essential for consistent heat and that considering the amount of rent payable, and considering the advertisement stating that the rental unit includes a fireplace, the landlord had an obligation to maintain it, and I accept that. I also accept the undisputed testimony of the tenant that the landlord said he'd fix it for a 10% rent increase. Therefore, I am satisfied that it is worth 10% from October 1, 2015 to December 8, 2015 when it was finally replaced. I am not certain how the tenants have arrived at the figure of \$556.45, however I find that for that period of time the amount is reasonable. The landlord knew about it at the beginning of October and didn't have it dealt with until hiring the landlord's agent in mid-November.

I have also reviewed the irrigation bills, and considering the undisputed testimony of the tenant that the landlord never did have the system repaired, I am satisfied that the bills speak for themselves with respect to the normal amount of consumption during January to March, 2015. I see no increase in charges by the water company, and I find that the tenants have established the claim. The tenant agrees that the water bill for July to December, 2015 is payable by the tenants, and I find that the difference between what the tenants claim and what they agree they owe is reasonable. I grant the tenants monetary compensation in the amount of \$256.12.

With respect to the security deposit and pet damage deposit, the *Residential Tenancy Act* requires a landlord to return a security deposit and pet damage deposit in full to a tenant within 15 days of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, whichever is later, or must make an application for dispute resolution claiming against the deposit(s) within that 15 day period. If the landlord fails to do either, the landlord must repay the tenant double the amount. In this case, the tenants' amended application seeks the \$900.00 security deposit and the \$900.00 pet damage deposit. The parties agree that the landlord's agent received the

tenants' forwarding address in writing on December 16, 2015, in the tenant's Amendments to the Application.

I refer to Residential Tenancy Policy Guideline #17 – Security Deposit and Set Off which states, in part:

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit, or
- a tenant's application for the return of the deposit

unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

And:

3. Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;

The landlord's agent offered no explanation as to why the security deposit and pet damage deposit have not been returned to the tenants. The landlord has not returned either deposit and has not made an application for dispute resolution claiming against them, and therefore, I find that the tenants are entitled to double the amount, or \$3,600.00.

The tenants agree that the landlord is owed \$2,450.00 for rent for December, 2015, and I set off that amount from the claim.

Since the tenants have been successful with the application, the tenants are also entitled to recovery of the \$50.00 filing fee.

In summary, I find that the tenants have established a claim in the amount of \$556.45 for the loss of the fireplace, \$256.12 for overpayment of the water bill, \$3,600.00 for double the amount of the deposits, and \$50.00 as recovery of the filing fee, for a total of \$4,462.57. I set off the unpaid rent for December, 2015 in the amount of \$2,450.00, and I grant a monetary order in favour of the tenants for the difference in the amount of \$2,012.57.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,012.57.

This order is final and binding and may be enforced.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 19, 2016

Residential Tenancy Branch

